

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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: **Chapter 11 Case No.**  
: **08-13555 (JMP)**  
: **(Jointly Administered)**  
: **Ref. Docket No. 36933**  
-----x

**In re**  
**LEHMAN BROTHERS HOLDINGS INC., et al.,**  
**Debtors.**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

KERRY O'NEIL, being duly sworn, deposes and says:

1. I am employed as a Noticing Coordinator by Epiq Bankruptcy Solutions, LLC, located at 757 Third Avenue, New York, New York 10017. I am over the age of eighteen years and am not a party to the above-captioned action.
2. On April 30, 2013, I caused to be served the:
  - a) "Order Granting Plan Administrator's Omnibus Objection to Claims Filed by Deborah E. Focht," dated April 30, 2013 [Docket No. 3633], and
  - b) "Transcript," dated April 26, 2013, annexed hereto as Exhibit A,

by causing true and correct copies to be:

- i. enclosed securely in separate postage pre-paid envelopes and delivered via overnight mail to those parties listed on the annexed Exhibit B, and
- ii. delivered via electronic mail to the party: AmericanReply@gmx.com.

3. All envelopes utilized in the service of the foregoing contained the following legend:  
“LEGAL DOCUMENTS ENCLOSED. PLEASE DIRECT TO THE ATTENTION OF  
ADDRESSEE, PRESIDENT OR LEGAL DEPARTMENT.”

/s/ Kerry O'Neil  
Kerry O'Neil

Sworn to before me this  
1<sup>st</sup> day of May, 2013

/s/ Cassandra Murray

Notary Public, State of New York

No. 01MU6220179

Qualified in Queens County

Commission Expires April 12, 2014

## **EXHIBIT A**

1 STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-JMP

4 - - - - -x

5 In the Matter of:

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7 LEMAN BROTHERS HOLDINGS INC., et al.,

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9 Debtors.

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11 - - - - -x

12

13 United States Bankruptcy Court

14 One Bowling Green

15 New York, NY 10004-1408

16 April 25, 2013

17 10:00 AM

18

19 B E F O R E:

20 HON. JAMES M. PECK

21 U.S. BANKRUPTCY JUDGE

22

23

24

25 ECRO: TIFFANY

1 HEARING re Doc #36007 - Four Hundred Third Omnibus Objection to  
2 Claims

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4  
5 HEARING re Doc #34303 - Plan Administrator's Omnibus Objections  
6 to Claims filed by Deborah Focht

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25 Transcribed by: Theresa Pullan

1 A P P E A R A N C E S :

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3 WEIL, GOTSHAL & MANGES LLP

4 Attorneys for Debtors

5 767 Fifth Avenue

6 New York, NY 10153

7

8 BY: ZAW WIN, ESQ.

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11 TELEPHONIC APPEARANCES:

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13 DEBORAH E. FOCHT

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P R O C E E D I N G S

THE COURT: Be seated please. I understand that we have a creditor participating by telephone. I just want to verify for my purposes that the telephone hookup is working, because I heard that there was a volume problem earlier. It's fine? Okay. Thank you.

MR. WIN: Good morning, Your Honor, Zaw Win, Weil Gotschal and Manges for Lehman Brothers Holdings Inc. The first matter on the agenda is the Four Hundred Third Omnibus Objection, which is a no liability claims objection, it's listed at ECF number 36007. And it seeks to disallow and expunge certain claims for benefits and employment related compensation. The debtors received two formal and one informal response to this objection. The response of Barry J. O'Brien, whose claim is claim number 32520 and the objection is listed at ECF number 36386, objects to all the relief sought and has been adjourned without date.

The second response is a response of Wendy M. Uvino, she has claim number 4770, and the response is listed at 36760, objects to the relief sought only with respect to a portion of Ms. Uvino's claim. After consultation with her counsel, she has agreed to the disallowance and expungement of a \$91,000 portion of her claim, and the response with respect to the remaining portion of her claim has also been adjourned.

In addition to those two, the debtors were contacted

1 informally by counsel to claimant William Broadbend (phonetic)  
2 whose claim is claim number 65126. He filed a claim in the  
3 amount of \$1,870,078.90, and the motions filed requested that  
4 \$1,070,000 portion of that claim be disallowed and provided  
5 that an \$800,078.90 of the claim was not subject to the motion.  
6 Upon consultation with his counsel, the exhibit proposed order  
7 was revised to reflect the disallowance of a million dollar  
8 portion of the claim and to provide that an \$870,078.90 portion  
9 of the claim is not subject to the objection. With the  
10 incorporation of that revision, we understand that Mr.  
11 Broadbend does not dispute the relief requested.

12 So we'd ask that the order only be entered only to  
13 the remaining portion of the motion with the first two claims  
14 being adjourned and adjustment to the third claim.

15 THE COURT: Fine, with that understanding, I'll enter  
16 the order.

17 MR. WIN: The last matter on the agenda today is the  
18 Plan Administrator's Omnibus Objection to claims filed by  
19 Deborah Focht. The objection is listed at ECF Number 34303.  
20 Ms. Focht filed two responses to the Plan Administrator's  
21 Objection. The first one is listed at ECF Number 35026 and the  
22 second is listed at ECF Number 36165.

23 The plan administrator has also filed a reply to Ms.  
24 Focht's responses which is listed at 36737 and that reply  
25 included a declaration of Daniel Glanz, Mr. Glanz is in Court



1 today.

2 The objection relates to five proofs of claim, claim  
3 numbers 34380 and 42914 which are against BNC Mortgage, 34381  
4 which is against LBHI, 42915 which is against Lehman Brothers  
5 over the counter derivatives, and 42916 which is against Lehman  
6 Brothers derivative products.

7 As set forth in our papers, the Plan Administrator  
8 has identified substantive and procedural defects to each of  
9 Ms. Focht's claims. Additionally, the Plan Administrator has  
10 reserved its rights to object to Focht's claims based on other  
11 defects that were not included in these papers just out of a  
12 desire to keep the papers as simple as possible at this point.  
13 In the interest of clarity, I propose to address three separate  
14 issues separately giving Ms. Focht an opportunity to respond to  
15 each issue before moving on to the next. Does that work for  
16 the Court?

17 THE COURT: I'm sorry, what was the question?

18 MR. WIN: I'm proposing to address three issues  
19 separately.

20 THE COURT: Yes, that's fine.

21 MR. WIN: Okay. Those issues are the timeliness of  
22 Ms. Focht's claims; and then second Ms Focht's derivative  
23 contract and insurance based claims; and third, Ms. Focht's  
24 loan origination claims. Starting out with the timeliness  
25 issue --

1 THE COURT: Before we get into the substance of the  
2 argument which you plan to present in three parts, I just want  
3 to verify that Ms. Focht is on the line and can hear what's  
4 being said, and as a result will be in a position to make  
5 responses after you've made your argument. So I'm just  
6 checking to make sure that she's here and actively  
7 participating telephonically.

8 MS. FOCHT: [indiscernible] can you hear me?

9 THE COURT: I can barely hear you. I think we have,  
10 I'm glad I asked because we have something of a problem. Just  
11 one second. Try again.

12 MS. FOCHT: Can you hear me now?

13 THE COURT: Try again.

14 MS. FOCHT: Again, can you hear me now?

15 THE COURT: I can hear you now, but I must tell you  
16 it's faint. This is like a Verizon commercial. Do you want to  
17 try again just for testing purposes?

18 MS. FOCHT: Yes. Can you hear me now?

19 THE COURT: I can hear you but you are faint. I  
20 think what, and this is certainly not your fault, but I'll  
21 simply note that given the economies of having to travel in  
22 person to deal with a matter of this sort, I understand why  
23 you're participating by telephone. But it is almost by  
24 definition less effective than being present in person in the  
25 courtroom, and we'll deal with it. But I'm letting you know

1 even before we get into the substance that from a technical  
2 perspective, you're not coming through loud and clear, at least  
3 not uniformly so. But let's proceed with the argument. My  
4 real question was whether you can hear us clearly so that  
5 you're in an position to hear counsel's argument and then be in  
6 a position to respond to it.

7 MS. FOCHT: Yes, I can hear very good.

8 THE COURT: Okay. Let's proceed.

9 MR. WIN: Okay, so getting back to --

10 MS. FOCHT: May I ask a question?

11 THE COURT: Yes, you may ask a question.

12 MS. FOCHT: Are you Judge Peck?

13 MR. WIN: She asked if you were Judge Peck.

14 THE COURT: Oh yes, I am.

15 MS. FOCHT: Okay. And Michael, is this the name of  
16 the attorney?

17 MR. WIN: No, my name is Zaw Win, Z-A-W last name  
18 Win, W-I-N.

19 MS. FOCHT: Okay, thank you.

20 THE COURT: Sir, please proceed with your argument.

21 MR. WIN: Okay. So the first issue that I'd like to  
22 discuss is the timeliness of Ms. Focht's claims. As the Court  
23 knows, the bar date in this case was established for September  
24 22nd, 2009 at 5:00 p.m. According to the time stamps inserted  
25 by Epic onto the claims, two of Ms. Focht's claims were

1 received within one day of the bar date, those are claim  
2 numbers 34380 and 34381. My administrator is not objecting to  
3 the timeliness of those claims at this time.

4 The remainder of Ms. Focht's claims, 42914, 42915 and  
5 42916 were received by Epic on October 23rd which is almost a  
6 month after the bar date. Nothing in Ms. Focht's papers have  
7 established any basis for excusable neglect that would justify  
8 the late filing of Ms. Focht's claims. In addition, it is  
9 clear that Ms. Focht had actual notice of the bar date because  
10 she did file two claims that were nearly timely. So her  
11 arguments about notice of the bar date are also similarly  
12 unavailing. And because she filed those two claims that were  
13 basically on time, there's really no reason that she couldn't  
14 have filed the other three claims at the same time. So the  
15 plan administrator would ask that the Court disallow claims  
16 42914, 42915 and 42916.

17 THE COURT: Okay. Ms. Focht, let's focus  
18 particularly on this procedural question. And a procedural  
19 question is limited to these three claims that were filed about  
20 one month after the bar date. I have previously issued rulings  
21 in this case and a written opinion dealing with the strict  
22 application of the bar date to all claimants. I'm not  
23 suggesting that you need to review that opinion, but it does  
24 reflect this Court's view as to the importance of the bar date  
25 particularly in a case as massive as the Lehman Brothers

1 bankruptcy cases. So I'd like you to comment and please speak  
2 up as loudly as you can for purposes of not only my ability to  
3 hear but also your ability to be effectively recorded on the  
4 transcript of today's hearing. And explain if you can the  
5 reason that these three claims were filed approximately one  
6 month after your initial two claims. That's I think an  
7 important questions for me to have answered.

8 MS. FOCHT: I'd like to point out that in the  
9 beginning I wasn't really receiving anything and I didn't  
10 understand what was going on because I never had had anything  
11 to do with Lehman Brothers as far as I ever knew and that while  
12 the battle was going down in the state court, I had asked for  
13 discovery. And I also asked for discovery from BNC before they  
14 went into the bankruptcy court. And all I was told was no, or  
15 I can't or [indiscernible] motions to compel, and as time went  
16 by [indiscernible] the very first time I found out about Lehman  
17 Brothers was on with the letters LBH [indiscernible] Your Honor  
18 and I attached that to my creditor's amended response to the  
19 Plan Administrator's Omnibus Objections. On it all I could go  
20 by was those three letters LBH. At that time that was probably  
21 way after [indiscernible]. At any rate, I still wasn't getting  
22 discovery, and later towards the end of the year which was  
23 around the time that I was filing that was the bar date, is  
24 when I heard about this [indiscernible] from the law professor  
25 [indiscernible] he was discussing the matter with derivatives

1 [indiscernible]. And the reason why I put that in there, Your  
2 Honor, was because I could not understand what was going on,  
3 why these people were attacking me so much down here, and there  
4 had to be a reason, it made no sense. I already let them know  
5 that they were collecting on the wrong account, they would not  
6 give me discovery, a lot of the discovery until after I already  
7 filed my claims history report. And some of that discovery was  
8 false, was showing two different properties as I've been saying  
9 all along. Now I'd like to object to the plan, the Plan  
10 Administrator's reply that was given to me like two days ago  
11 because --

12 THE COURT: Can I just break? I don't mean to break  
13 in, but we really need to focus on the question of why these  
14 three claims were filed one month after the initial two claims.  
15 That's my question. This has nothing to do with discovery. It  
16 has to do with whether or not you have an excuse that is  
17 legally sufficient to explain why certain claims were filed  
18 late. And it appears that the first two claims were filed  
19 with knowledge that there was a bar date. I'd like a yes or no  
20 answer to the following question. Did you know that there was  
21 a bar date? That's a yes or a no.

22 MS. FOCHT: No, Your Honor. As soon as I found out  
23 about it, I worked on it, I rushed it through and I eventually  
24 had to amend it because [indiscernible].

25 THE COURT: I'm sorry, I didn't understand your

1 answer. I want it to be a yes or a no. The question is, did  
2 you know that there was a bar date.

3 MS. FOCHT: No, Your Honor.

4 THE COURT: Okay, thank you. And then the question  
5 is, why did you not file claims 42914, 42915 and 42916 prior to  
6 the bar date?

7 MS. FOCHT: Your Honor, that was because I was  
8 unaware of the other names that they had listed as  
9 subsidiaries, and like I said I am unfamiliar with bankruptcy  
10 proceedings.

11 THE COURT: Okay. Do you want to respond?

12 MR. WIN: Yes, I mean with due respect I find the  
13 answer implausible. I mean she must have gone on the Epic  
14 website to download the proof of claim form, and on the Epic  
15 website was a list of all of the debtors. So all of that  
16 information was available to her when she filed the first two  
17 claims, which as we've said were within one day of the bar date  
18 and which we're not objecting to on the basis of timeliness at  
19 this point. She also attached to her proofs of claim  
20 correspondence that she had with Epic in connection with the  
21 filing of the first two claims which also suggests that she was  
22 aware that there was a timeliness issue.

23 And I guess the third thing is that the legal  
24 theories that she's asserted in the three claims that we are  
25 asserting are late, are identical to the legal theories that

1 she asserted in the two claims that were timely. So really the  
2 only difference between the claims that were filed within a day  
3 of the bar date and the claims that were filed a month late are  
4 that for two of the claims she added additional debtors, Lehman  
5 Brothers OTC and Lehman DP. And that information, all that  
6 information was available to her and could have been included  
7 in claims filed within, at the same time as the first two  
8 claims. So there's really no reason that I can think of that  
9 she couldn't have filed all of her claims at the same time she  
10 filed claim numbers 34380 and 34381.

11 And I guess the third thing is she mentioned parties  
12 attacking her in Florida, and I'd just like to point out that  
13 similar to many of her other allegations, those parties are not  
14 before this Court, they're third parties, the parties that  
15 acquired the loan after BNC sold it and they were not  
16 controlled by Lehman and not doing Lehman's bidding.

17 THE COURT: Okay. Ms. Focht, do you have any further  
18 comments with regard to the timeliness of these three claims?

19 MS. FOCHT: Yes, Your Honor. I would like to  
20 reiterate that I'm not familiar with the bankruptcy procedures.

21 THE COURT: If I could just interject. Your lack of  
22 familiarity with bankruptcy procedure is irrelevant to the  
23 question that I proposed to you because you had sufficient  
24 knowledge of bankruptcy procedure to file the earlier two  
25 claims which were a day late, but nonetheless reflected an



1 awareness that there was a date in the case that mattered. And  
2 you acknowledged that you were aware of that in my earlier  
3 question. Correct?

4 MS. FOCHT: Yes, Your Honor, I would like to add some  
5 more please.

6 THE COURT: This is a matter of fundamental case  
7 administration in every bankruptcy case, bar dates matter, and  
8 there are adverse consequences to creditors that fail to file  
9 their claims on or before the bar date. It is possible to  
10 argue credibly that a one month delay is excusable due to  
11 excusable neglect, but it becomes almost impossible to credibly  
12 make that argument when claims are filed in recognition of the  
13 bar date a month before the three claims that we're now talking  
14 about.

15 And so I conclude based upon our discussion which I  
16 am treating as the functional equivalent of an evidentiary  
17 record, that Ms. Focht had an awareness of the bar date,  
18 something which she admitted in this telephone conversation and  
19 attempts to explain the delay in filing the three claims  
20 presently being discussed, 42914, 42915 and 42916, on the basis  
21 of being unsophisticated in bankruptcy matters generally and  
22 being somewhat confused. I find that that is not a sufficient  
23 reason to excuse the late filing of these three claims in light  
24 of the fact that substantially similar claims were filed one  
25 month earlier against different parties. Moreover,

1 particularly with respect to LBOTC and LBDT, there is zero  
2 nexus between the facts alleged and the proof of claim and  
3 these debtors. So that even if we were to deal on the merits  
4 with these claims and ignore the fact that they are untimely,  
5 it is highly likely that I would find that there is no right to  
6 payment in any event.

7 For that reason, the claims are all disallowed as  
8 untimely and we'll proceed to deal with claims 34380 and 34381.

9 MR. WIN: Thank you, Your Honor. Moving on to claim  
10 34381, this was a claim that was filed against Lehman Brothers  
11 Holdings, Inc. As far as I can tell, Ms. Focht's basis for  
12 this claim is an allegation that LBHI held some kind of an  
13 insurance policy or derivative contract that was designed to  
14 pay LBHI, according to Ms. Focht, 3 million upon default of Ms.  
15 Focht's loan. As set forth in our papers, the debtors have not  
16 been able to identify, and Ms. Focht doesn't identify, any  
17 insurance policy or derivative contract that was directly  
18 related to the loan. And more importantly perhaps, even if  
19 such an insurance policy derivative contract did exist, Ms.  
20 Focht doesn't allege any basis that would establish a right to  
21 payment for her from the proceeds of such insurance policy or  
22 derivative contract. So she's failed to establish a prima  
23 facie case for any right to payment in connection with this  
24 claim, or really even any connection between herself and these  
25 alleged financial instruments that LBHI may or may not have

1 held at the time of bankruptcy.

2 THE COURT: Is that argument limited to the claim  
3 against LBHI 34381?

4 MR. WIN: It would also be applicable to the claims  
5 against LBDT and LBOTC, but as I understand the Court has  
6 already disallowed those claims. At this point it would only  
7 apply to the remaining claim against LBHI.

8 THE COURT: And you're not making an argument at this  
9 moment with respect to claim 34380 against BNC?

10 MR. WIN: My understanding, and again it's a little  
11 hard from the pleadings to specifically identify which claims  
12 Ms. Focht is asserting against which debtor. but the way I  
13 understand her argument is that the claims against LBHI are  
14 related to the insurance policy and the derivative contract,  
15 and the remaining claims that relate to the origination of the  
16 loan are against BNC. It may be that that's not her intent,  
17 but based on, you know, our good faith reading of her papers,  
18 that was the conclusion that we drew.

19 THE COURT: Okay. Let's look for an explanation from  
20 Ms. Focht herself. The claim against LBHI which we're now  
21 discussing appears to be a claim based upon an insurance  
22 contract or a derivatives contract. Is that right?

23 MS. FOCHT: Yes it would be also due to the fact that  
24 [indiscernible] of the \$109,000. And I put that in as an  
25 exhibit under [indiscernible] my amended response to the plan,

1 objections.

2 THE COURT: If I could just ask a very, very basic  
3 question, and if you could answer it in the simplest way that  
4 you can, why do you think you have any claims against LBHI  
5 inasmuch as you did not have any dealings with LBHI of any  
6 sort?

7 MS. FOCHT: Your Honor, I was just explaining that  
8 the exhibit shows that [indiscernible] the \$109,000 from me,  
9 but I did not receive this until after, after I had filed my  
10 original claim. The only thing that I could base this on is I  
11 was told to go in the Lehman Brothers because like I said  
12 [indiscernible] had at that time. And right now they're also  
13 sending me a new reply which I wanted to object to because I  
14 did not receive this in time, it just shows further  
15 inconsistencies with discovery. So that was my reason for  
16 putting in my statement [indiscernible] I needed discovery in  
17 order to amend my motion and my claims properly [indiscernible]  
18 before I could even start my case. So I don't know how else to  
19 do this without the record, so my request was for discovery and  
20 I haven't received it, I haven't received it.

21 THE COURT: Well, according to the papers that I have  
22 reviewed that have been filed in response to your opposition to  
23 the expungement of your claims, based upon a review an internal  
24 review that I gather is supported by a witness here.

25 MR. WIN: That's correct.

1 MS. FOCHT: Your Honor --

2 THE COURT: I'm just in the middle of speaking, so  
3 for record purposes, let's just let me finish. And then you'll  
4 have a courteous opportunity to say what you need to say in  
5 response. Based upon the assertions made by a responsible  
6 witness from the Plan Administrator, there are no documents  
7 that are responsive to your general request, and so even if you  
8 were to formally pursue discovery, the answer would be the same  
9 and there is a declaration which has been submitted and the  
10 witness who provided that declaration is in court today. The  
11 only question I suppose I would ask and this is a very  
12 difficult matter to handle with you on the telephone speaking  
13 in a manner that is still in my view quite faint relative to  
14 the other volume levels of people who are appearing live in  
15 Court, and that would be for Mr. Glanz to come to the podium  
16 and explain in his own words the content of his declaration  
17 which has been submitted in support of the reply. It's a  
18 declaration dated April 22, 2013 consisting of some 18  
19 paragraphs. But I don't know if you've seen that. And even if  
20 you have seen it, it may be that it would be useful for him to  
21 explain the substance of that declaration. And if you have  
22 questions concerning his statements, you can ask those  
23 questions right now, and he can then further respond. That way  
24 in effect, you'll be getting some of the discovery that you  
25 claim to require. Would that be all right?

1 MS. FOCHT: Excuse me, Your Honor. Is there a  
2 [indiscernible] before I respond?

3 THE COURT: I'm sorry, I'm not understanding you.

4 MS. FOCHT: I just received this in the mail, so I  
5 didn't get a chance to really carefully go through it, all I  
6 saw was one line across the sheet here just saying  
7 [indiscernible] I mean it doesn't really have a document to it  
8 [indiscernible] so I don't have any transfer information on  
9 what happened at all.

10 THE COURT: Ms. Focht, the issue here is whether you  
11 have a viable claim against LBHI, that's the issue.

12 MS. FOCHT: Okay.

13 THE COURT: And we are going to deal with that today.  
14 And we have a witness who is going to provide information to  
15 you concerning the discovery that you have requested in a  
16 variety of informal ways in the context of this claim objection  
17 proceeding. And I'd like you to have that information so that  
18 you can be satisfied that in fact there are no documents that  
19 relate to an insurance contract or derivative contract  
20 applicable to your mortgage from BNC. I'm going to ask Mr.  
21 Glanz to now make a presentation for your benefit, because I  
22 can read the declaration, but I think it would be useful for  
23 him to explain what that declaration consists of and for you to  
24 have an opportunity if you wish to avail yourself with that  
25 opportunity to ask him questions about his statements made to

1 me. Is that all right?

2 MR. WIN: That's all right, Your Honor. Would it be  
3 helpful if I asked him questions to elicit the testimony that  
4 he included in his declaration?

5 THE COURT: That might be a good way to develop it on  
6 the record. And if Ms. Glanz (sic) wishes to ask further  
7 questions, that's fine. But in this manner, she'll be able to  
8 hear for herself what Mr. Glanz has to say in response to your  
9 questions. Why don't we do that? And Mr. Glanz, you can sit  
10 in the witness stand and we can proceed in that manner.

11 TESTIMONY OF MR. GLANZ

12 BY MR. WIN:

13 Q. Can you please state your name for the record?

14 A. Daniel Glanz.

15 Q. And can you please give us your title at Lehman Brothers?

16 A. Vice president.

17 Q. And can you give us a little bit of background of how long  
18 you've worked at Lehman Brothers and what your job is?

19 A. Sure. I've been with Lehman since September of 2001. I  
20 was, I've been working in the mortgage area of Lehman's since  
21 then. Prior to bankruptcy, I was working with the information  
22 technology area at Lehman Brothers where I was responsible for  
23 one of the technology platforms, the platform I refer on my  
24 declaration is called Hold On Tracking (phonetic), and post  
25 petition, I've been working in the group responsible for the

1 wind down and managing of the assets remaining in the mortgage  
2 business.

3 Q. What does the Hold On Tracking system do?

4 A. The Hold On Tracking platform was built to be the system  
5 of record to maintain a record of all the loans that Lehman  
6 [indiscernible] purchased and either held or sold and it was a  
7 place for Lehman to keep track of the loans that it owned, get  
8 regular updates on their performance and ultimately track if  
9 they were sold, that sale of those mortgages.

10 Q. So is it fair to say that Lehman business people depended  
11 on information that was contained in the Hold On Tracking  
12 system to show things like sales or assignments of loans out of  
13 the estate to third parties?

14 A. Yes.

15 Q. Thank you. Attached to your declaration was a one page  
16 exhibit. Can you describe that exhibit a little bit for me?

17 A. Sure.

18 Q. Would it be helpful if I gave you a copy of it?

19 A. Absolutely, just to refresh my memory. Thank you. The  
20 exhibit attached just really just one line --

21 MR. WIN: Excuse me for one second. For the record,  
22 I handed Mr. Glanz a document that was attached to his  
23 declaration as Exhibit 1.

24 BY MR. WIN:

25 A. The exhibit is an extract, a report from the underlying



1 database, the Hold On Tracking. Just a bit of background which  
2 I explained as well in the declaration, Hold On tracking  
3 essentially is two pieces, the database that stored data and  
4 then a software application that allowed users to access the  
5 data to view the data and to modify it through their ordinary  
6 business dealings. Post bankruptcy the system was shut down,  
7 it was no longer in use and the database itself was maintained  
8 by the estate for the purposes of research and having access to  
9 those records. That database was, what we call, it's been put  
10 into a read only mode so you couldn't modify the data, all you  
11 could do is read from it and generate reports from the system.  
12 The record that I provided here was the only information I was  
13 able to find on the loan in question. It's a very brief  
14 record, it doesn't state much. As I mentioned as well, the  
15 system, you know, as Lehman grew, as the business grew, the  
16 system itself was continually evolved and improved. In the  
17 early 2000s, 2001, '02, '03, the system had, I would say a  
18 somewhat more limited data than for example what you'd see in  
19 the declarations that I provided for loans that were transacted  
20 upon closer to petition date. And where that manifested itself  
21 here specifically in the first data field showing the page  
22 where it identifies the name of the buyer there was no record  
23 kept in this system specifically who the buyer was. It just  
24 used the generic moniker, the street, which is meant to  
25 identify any non-Lehman company. So all this record is really

th

1 telling you is that on December 30 of 2002, this loan was sold  
2 and it was sold to a third party. The name of that third party  
3 was not recorded in this system, and then there were no further  
4 records maintained on this loan. Generally, once Lehman sold  
5 the loan, it did not keep track of it, it had no relationship  
6 to it and it just did not interact with that loan any further.

7 Q. So following the date of sale which is listed here as  
8 December 30th, 2002, were you able to uncover any documents or  
9 other evidence that would suggest that Lehman had anything else  
10 to do with this loan?

11 A. No, I searched not only in this system but we have just  
12 electronic archives that we maintain postpetition, did a search  
13 for them for both the property address and the loan number, and  
14 I was not able to locate any further documentation or any  
15 further records.

16 MR. WIN: Thank you.

17 THE COURT: I have a question Mr. Glanz. Are there  
18 any records regardless of whether it's with reference to this  
19 loan that Lehman maintains that purport to connect the  
20 insurance contracts or derivative contracts with mortgage loans  
21 that had been originated by BNC at any time?

22 THE WITNESS: Not that I'm aware of.

23 THE COURT: All right. Thank you. Ms. Focht, do you  
24 have any questions you would like to ask of Mr. Glanz?

25 MS. FOCHT: Your Honor, I don't want to, I believe

1 that I misunderstood what was going on, but I could barely hear  
2 him, I'll just say that and [indiscernible]. The court  
3 reporter probably did and I can listen to it later on.

4 THE COURT: We're unable to hear you. We're unable  
5 to hear you in a manner sufficient to record what you're saying  
6 on the record of this hearing. Are you speaking on a regular  
7 land line?

8 MS. FOCHT: Yes.

9 THE COURT: Can you please speak up as, I don't want  
10 you to scream into your phone and I'm not suggesting that it's  
11 your phone's fault, but our equipment here is not picking you  
12 up very clearly.

13 MS. FOCHT: Thank you, Your Honor. I was wondering  
14 if he said that there were no records. Is that what he was  
15 saying, he had no records?

16 THE COURT: He's saying that the only records that  
17 relate to your loan within the entire data entry system  
18 maintained by Lehman Brothers is a one line statement which  
19 reads, if you don't have it in front of you, buyer, the street,  
20 that means the loan was sold to an entity, a financial  
21 institution, or a securitization trust or some third party that  
22 is not Lehman related, that's what that term, the street,  
23 means. There's a loan I.D. number which is 107127821; there's  
24 an address, 530 Loral Road; there's a city, Nokomis, Florida;  
25 there's a zip code, 34275; there's a servicer listed, Option

1 One Mortgage is the name of the servicer; there's a sold  
2 settled date which is 12/30/02. And there's another line, the  
3 last line it says lien position and it says one, I assume that  
4 means it's a first lien mortgage. Is that right, Mr. Glanz?

5 MR. GLANZ: Correct, Your Honor.

6 THE COURT: All right. So that's the only  
7 information that is available in the Lehman system. I also  
8 asked Mr. Glanz a much more general question which was whether  
9 regardless of whether we're talking about your loan, but  
10 talking about all loans that may have been originated by BNC to  
11 any and all borrowers that may have obtained financing through  
12 that source, did Lehman Brothers maintain any records that were  
13 identified as either insurance contracts or derivate contracts  
14 that would be identified to a particular loan. And the answer  
15 was no. That means based upon this inquiry that I'm satisfied  
16 that there is no discovery to be had here because there are no  
17 documents and I am satisfied that Mr. Glanz is a credible and  
18 responsible witness who is able to provide information  
19 concerning the records of Lehman Brothers.

20 Is there anything more that you, however, would wish  
21 to ask Mr. Glanz?

22 MS. FOCHT: Yes, Your Honor, thank you. I am blaming  
23 myself because I have completely different paperwork  
24 [indiscernible] and it doesn't name Option One and I'm just  
25 wondering is there another person I can speak to who would have

1 access to records and who was providing records to Wells Fargo  
2 [indiscernible] or any other source regarding Care Bank,  
3 Capital Corp, regarding Aurora Loan Services, regarding Lehman  
4 Capital, which is a division of Lehman Brothers Holdings Inc.,  
5 and that would have been dated as of September 1st, 2002  
6 [indiscernible] servicing agreement.

7 THE COURT: Mr. Glanz, do you understand the  
8 question?

9 MR. GLANZ: I'm not entirely sure what the question  
10 for me is, Your Honor.

11 THE COURT: Ms. Glanz, excuse me, Ms. Focht, do you  
12 have the ability to travel to New York to participate in a  
13 further hearing because I find that unless we're able to fix  
14 our equipment that your participation by telephone is  
15 insufficient for our purposes to be able to hear and respond to  
16 what you have to say. I want you to have a full and fair  
17 hearing, but I must tell you, I don't think that at least I'm  
18 able to understand all that you're trying to do here. It may  
19 be that you are seeking discovery unrelated to the bankruptcy  
20 cases and if that's true, that's not anything you'll be able to  
21 get through this bankruptcy court.

22 I also have an understanding that the property in  
23 question has been foreclosed, that you mentioned in your last  
24 question the financial institution Wells Fargo. I understand  
25 that Wells Fargo was a trustee for securitization trust that

1 ending up holding the mortgage that was originated by BNC. But  
2 this witness is not in a position to talk about documentation  
3 that belongs to other financial institutions, nor could any  
4 witness from Lehman Brothers be in a position to talk about  
5 such documentation. And I am frankly concerned that you may be  
6 trying to use the bankruptcy process for a purpose that it is  
7 not intended to be used for. It is not a means to obtain third  
8 party discovery in connection with litigation claims that you  
9 may in fact have against third parties. I make no comment with  
10 respect to that. But this is probably the wrong forum in which  
11 to pursue such objectives. Are you still there?

12 MS. FOCHT: Yes, I'm here.

13 THE COURT: Is there any other question? First of  
14 all, maybe you can restate your question for Mr. Glanz in a way  
15 that he can understand it, and then he can provide you with an  
16 answer.

17 MS. FOCHT: Thank you. My questions is this. As I  
18 stated they're down here collecting on the wrong  
19 [indiscernible] this case is under appeal for many reasons. At  
20 any rate, information that you provided to the Court is very  
21 different than information that I was provided in discovery  
22 down here, which is actually [indiscernible] and that is  
23 they're collecting on the wrong loan account and this is the  
24 reason why I'm requesting discovery to find out [indiscernible]  
25 what and when and according to what you're sending in as a

1 document it appears that it's showing [indiscernible] and I  
2 provided evidence if you've seen the attachments where you're  
3 also pointing out another [indiscernible] which I found out is  
4 related to Lehman Brothers as well. Do you understand?

5 MR. WIN: May I jump in here, Your Honor?

6 THE COURT: Why don't you say what you have to say.

7 MR. WIN: Sure. I think two things. I mean I think  
8 first thing is that Lehman Brothers is not involved in the  
9 foreclosure action in Florida. To the extent that Ms. Focht  
10 believes that she has claims against the entities that are  
11 involved in that action, she has a venue to raise those claims  
12 which is the Florida foreclosure action.

13 And second, to the extent that she claims against  
14 Aurora, Aurora is not a debtor and she's free to bring any  
15 claims that she feels that she has against Aurora in the  
16 appropriate state occur. But a claim against Aurora, even if  
17 such a claim existed does not create a claim against Lehman  
18 Brothers Holdings Inc. or BNC or any of the other debtors.

19 THE COURT: Let me add to what counsel just said.  
20 Ms. Focht, you are not the only person who as a homeowner with  
21 a mortgage that has gone into foreclosure, has sought to  
22 explore whether there was any recourse in this bankruptcy case.  
23 There have been a handful, not many, a handful of other  
24 individuals all over the United States, perhaps three, that  
25 come to mind that have similarly sought to connect their

1 misfortunes as parties who got caught up in the mortgage crises  
2 of the 2000s into some kind of right of action against Lehman  
3 Brothers or Aurora. No one has been able to demonstrate a  
4 connection between Aurora and LBHI because Aurora is a  
5 subsidiary of LBHI that never went into bankruptcy. It's  
6 simply not before this Court. And claims, if any, against  
7 Aurora or against third party mortgage servicers have no place  
8 in this bankruptcy court.

9 So to the extent that you have a complaint against  
10 Wells Fargo or any other financial institution that may have  
11 had some connection to the loan after it was sold in 2002, that  
12 truly has nothing to do with this bankruptcy or any of the  
13 debtors that are before this Court. And so if we were to have  
14 a merit based discussion, you would lose, I regret to tell you.  
15 Now let's deal with the claim.

16 MS. FOCHT: Your Honor, may I speak?

17 THE COURT: Excuse me?

18 MS. FOCHT: May I speak?

19 THE COURT: Of course.

20 MS. FOCHT: I don't want to, I don't think that your,  
21 I don't think that these, I don't [indiscernible] the way that  
22 you said it. My claim here is someone has the record and has  
23 not provided them, my second claim was someone is collecting on  
24 the wrong loan account, and the attorneys on the other side  
25 accusing me as if I'm running in here because I'm fighting a



1 foreclosure. I am not, they are down there collecting on the  
2 wrong loan account. So but my other statement was that I did  
3 not realize how much evidence I need to put in all at once  
4 because it seems that [indiscernible] now I'm going by what the  
5 state court down here is notating in one of my orders and one  
6 of those orders was for me to file [indiscernible] so this gets  
7 kind of confusing to me when I'm being you know going back and  
8 forth trying to get these records, trying to file  
9 [indiscernible] so I am doing that. And I also [indiscernible]  
10 bankruptcy from BNC. Now I'm hearing from you and I believe  
11 you are telling me I'm not [indiscernible].

12 THE COURT: What I'm telling you is that based upon  
13 the evidence that has been presented today, which points out  
14 that there is no contract or derivative associated with this  
15 loan that belongs to Lehman that can be tracked by Lehman, that  
16 Lehman has any tie to whatsoever, not only with respect to this  
17 loan but with respect to any other loans that were originated  
18 by BNC. A proof of claim against LBHI that purports to be  
19 based upon some unspecified liability associated with an  
20 insurance contract or a derivative contract, fails to state a  
21 claim against LBHI that can be proven, and as a result I don't  
22 believe there is any evidence that you could present that would  
23 support that claim.

24 MS. FOCHT: [indiscernible]

25 THE COURT: I'm granting the objection as to this

1 particular claim, and we should now go to the BNC claim.

2 MS. FOCHT: Are you also objecting to my evidence of  
3 the exhibit [indiscernible].

4 THE COURT: I don't know what you just said.

5 MS. FOCHT: Are you also objecting to the evidence  
6 [indiscernible] that Lehman Brothers has taken the funds, my  
7 funds, 109,000?

8 THE COURT: What evidence are you referring to?

9 MS. FOCHT: I had attached an exhibit, exhibit B to  
10 my creditor amended response.

11 THE COURT: Well there are several responses. Maybe  
12 counsel for Lehman can point me in the right direction.

13 MR. WIN: Are you referring to exhibit B which is the  
14 document entitled loan disbursement instructions?

15 MS. FOCHT: Yes, Your Honor, that's it.

16 THE COURT: Counsel, can you comment with respect to  
17 that document?

18 MR. WIN: Yeah. I mean I guess I have, I can  
19 describe what the document looks like to me, and then I have a  
20 question to Ms. Focht about her interpretation of this  
21 document. It's a document titled loan disbursement  
22 instructions, and it looks to me like a document that a  
23 mortgage originator would send internally in the Lehman case  
24 from BNC to either Lehman Brothers Holdings Inc. or Lehman  
25 Brothers Inc, it's not clear from the document, instructing the

1 entity in this case with the funds which would be Holdings or  
2 LBI to disburse the loan to the borrower, which in this case  
3 would be Ms. Focht. It's consistent with the amount of the  
4 loan, which I understand to be around, approximately 10,000.  
5 It looks like they started with that amount and then they  
6 deduct it for title insurance, loan service, I mean sort of  
7 basic origination fees. And then at the bottom, there's the  
8 amount that was actually transmitted to Ms. Focht. But what  
9 I'm hearing Ms. Focht say suggests that she's alleging that she  
10 actually in taking out a loan gave Lehman Brothers money which  
11 doesn't make a whole lot of sense. So I guess I'm a little  
12 confused by that.

13 Ms. Focht, is that what you're stating that you paid  
14 BNC or LBHI \$110,000?

15 MS. FOCHT: Yes. This money came from me at the  
16 closing [indiscernible] reference to Lehman Brothers.

17 MR. WIN: So at a closing of a loan transaction where  
18 you were the borrower, you paid the entity \$110,000?

19 MS. FOCHT: Yes, Your Honor, and I received a problem  
20 [indiscernible] 2007 is when I realized they're collecting on  
21 the wrong loan, and instead of settling this matter with me,  
22 they send an investigation letter which they never did anything  
23 with instead filed a foreclosure behind my back, so I was stuck  
24 trying to get what was going on. I didn't know about Wells  
25 Fargo, I never heard of Wells Fargo, they were the ones at the

1 foreclosure, I can't find anything valid with them. And at any  
2 rate --

3 THE COURT: Ms. Focht, let me ask you a question. I  
4 don't mean to interrupt you. Was this loan from BNC a loan  
5 that you took out in connection with the original purchase of a  
6 home or was it a refinancing?

7 MS. FOCHT: On this particular one this was the  
8 purchase of a home.

9 THE COURT: Was the purchase of a home.

10 MS. FOCHT: Yes.

11 THE COURT: And how much equity did you put down on  
12 the home?

13 MS. FOCHT: At the closing I provided them with close  
14 to \$110,000, that's all I remember, I was in an accident I was  
15 brought into this, rushed into this [indiscernible] you know  
16 suffer from post traumatic stress disorder which I still have  
17 [indiscernible].

18 THE COURT: I'm going to make a suggestion. This is  
19 an unusually difficult hearing because the individual most  
20 affected by it, Deborah Focht, is participating from Florida by  
21 telephone on a telephone line that is not coming through as  
22 clearly as it might, and there are a number of facts being  
23 alleged by Ms. Focht as a witness even though she is not  
24 physically present in Court for me to judge her demeanor and  
25 she also has not been sworn to tell the truth.

1           To some extent what she is saying relates to personal  
2       recollection, to some extent it relates to documents. The  
3       record I find is unclear with regard to much of what she is  
4       saying to me or trying to explain. I believe that it may be of  
5       some value for Ms. Focht to have her deposition taken or for  
6       her to appear in person at her expense to participate in a  
7       hearing in which she will be able to present her case as a live  
8       witness, with or without counsel. I would note that as a lay  
9       witness and as a party who is apparently preparing documents on  
10      her own, perhaps with the assistance of a lawyer, that it is  
11      very, very difficult for me to follow precisely what she is  
12      saying.

13           And the last question and answer from counsel which  
14      elicited the statement that this witness believes that she paid  
15      Lehman directly or indirectly \$110,000, if that's the right  
16      number, to me sounds preposterous. But it may be true, I have  
17      no way of knowing. It sounds as if it may be money paid in  
18      connection with the acquisition of real property as the down  
19      payment, the mortgage financing being part of the purchase  
20      price, but I don't know if that is true, I don't know what the  
21      transactional relationship might be. For that reason, I would  
22      urge that counsel for LBHI and BNC in this matter endeavor to  
23      find out with greater clarity in a manner that the Court can  
24      actually evaluate it, what this witness is actually saying  
25      because I truly don't understand it. And Ms. Focht, I have

1 been sitting as the bankruptcy Judge in the Lehman Brothers'  
2 case for over four and a half years, and this is about the most  
3 confusing hearing I have had in all that time.

4 MS. FOCHT: Sorry.

5 THE COURT: I'm just telling you that it's not clear  
6 to me what you're saying, what you want and the basis for it.  
7 I'm also telling you that as a homeowner in Florida whose  
8 mortgage ended up in a securitization pool, and who ended up in  
9 foreclosure, you are one of millions of Americans who ended up  
10 having their home loan mortgages originated by an originator  
11 and then having the loans sold into a securitization facility  
12 and then because of an inability to service the mortgage, ended  
13 up in foreclosure. I am sympathetic and I'm sorry that  
14 happened to you, but that has nothing to do with LBHI. LBHI is  
15 the parent company in this bankruptcy case of a number of  
16 affiliates, some in bankruptcy, many, many not in bankruptcy.  
17 And one of those affiliates happens to be Aurora Bank, an  
18 entity that I have heard about through this bankruptcy case,  
19 but it is not a debtor, and as a result it is not before this  
20 Court.

21 We need to get to the bottom of this. If in fact  
22 your proof of claim relates to money that you believe you gave  
23 to Lehman Brothers, that is a very different fact pattern from  
24 the one that I believe I have analyzed. What I believe I have  
25 analyzed is that you borrowed money from a mortgage originator,

1 in this instance, BNC, that you alleged generally that the  
2 transaction at the time was for reasons not clearly specified  
3 to me fraudulent or improper or in some manner actionable by  
4 you, and you have then sought to find avenues of liability  
5 throughout the Lehman family even though the BNC loan was sold  
6 many years ago into a securitization vehicle that has zero  
7 connection to any Lehman entity.

8 If the facts are as I have described them, you have  
9 no basis to pursue any claim in this bankruptcy case. If the  
10 facts are different you may have a basis to pursue a claim in  
11 this bankruptcy case. I need to know those facts before I can  
12 take further action with regard to the two remaining proofs of  
13 claim. So we'll have further proceedings another day or this  
14 will be resolved by agreement. We're adjourned.

15  
16 (Proceedings concluded at 11:01 AM)  
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I N D E X

RULINGS

DESCRIPTION

PAGE

HEARING re Doc #36007 - Four Hundred Third

Omnibus Objection to Claims

5

HEARING re Doc #34303 - Plan Administrator's

Omnibus Objections to Claims filed by

Deborah Focht

15 (partial)

Second part cont'd



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CERTIFICATION

I, Theresa Pullan, certify that the foregoing is a  
correct transcript from the official electronic sound recording  
of the proceedings in the above-entitled matter.

AAERT Certified Electronic Transcriber CET\*\*00650

Theresa Pullan

April 26, 2013

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

## **EXHIBIT B**

DEBORAH E. FOCHT  
1613 INGRAM AVE.  
SARASOTA, FL 34232

DEBORAH E. FOCHT  
530 LAUREL ROAD  
NOKOMIS, FL